

House Bill 237 (AS PASSED HOUSE AND SENATE)

By: Representatives Martin of the 47<sup>th</sup>, Stephens of the 164<sup>th</sup>, Lewis of the 15<sup>th</sup>, Watson of the 91<sup>st</sup>, Royal of the 171<sup>st</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

To amend Code Section 48-8-3 of the Official Code of Georgia Annotated, relating to exemptions from sales and use tax, so as to change certain provisions regarding exemptions with respect to the sale of certain manufacturing machinery or equipment, certain primary handling equipment, certain aircraft machinery or equipment, certain parts, machinery clothing, molds, dies, or tooling, and certain air or water pollution eliminating machinery and equipment; to provide an effective date; to provide for applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Code Section 48-8-3 of the Official Code of Georgia Annotated, relating to exemptions from sales and use tax, is amended by revising paragraphs (34), (34.1), (34.2), (34.3), and (36) as follows:

"(34) The sale of the following types of manufacturing machinery:

(A) Machinery or equipment which is ~~used directly in~~ necessary and integral to the manufacture of tangible personal property when the machinery or equipment is bought to replace or upgrade machinery or equipment in a manufacturing plant presently existing in this state and machinery or equipment components which are purchased to upgrade machinery ~~used directly in~~ or equipment which is necessary and integral to the manufacture of tangible personal property in a manufacturing plant;

(B) Machinery or equipment which is ~~used directly in~~ necessary and integral to the manufacture of tangible personal property when the machinery or equipment is ~~incorporated~~ is used for the first time in a new manufacturing plant located in this state;

(C) Machinery or equipment which is ~~used directly in~~ necessary and integral to the manufacture of tangible personal property when the machinery or equipment is ~~incorporated~~ is used as additional machinery or equipment for the first time ~~into~~ in a manufacturing plant presently existing in this state; and

(D) Any person making a sale of machinery or equipment for the purpose specified in subparagraph (B) of this paragraph shall collect the tax imposed on the sale by this article unless the purchaser furnishes him with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the machinery or equipment without paying the tax. As a condition precedent to the issuance of the certificate, the commissioner, at ~~his~~ the commissioner's discretion, may require a good and valid bond with a surety company authorized to do business in this state as surety or may require legal securities, in an amount fixed by the commissioner, conditioned upon payment by the purchaser of all taxes due under this article in the event it should be determined that the sale fails to meet the requirements of this subparagraph;

(34.1)(A) The sale of primary material handling equipment which is used ~~directly~~ for the handling and movement of tangible personal property and racking systems used for the conveyance and storage of tangible personal property in a warehouse or distribution facility located in this state when such equipment is either part of an expansion worth \$5 million or more of an existing warehouse or distribution facility or part of the construction of a new warehouse or distribution facility where the total value of all real and personal property purchased or acquired by the taxpayer for use in the warehouse or distribution facility is worth \$5 million or more.

(B) In order to qualify for the exemption provided for in subparagraph (A) of this paragraph, a warehouse or distribution facility may not make retail sales from such facility to the general public if the total of the retail sales equals or exceeds 15 percent of the total revenues of the warehouse or distribution facility. If retail sales are made to the general public by a warehouse or distribution facility and at any time the total of the retail sales equals or exceeds 15 percent of the total revenues of the facility, the taxpayer will be disqualified from receiving such exemption as of the date such 15 percent limitation is met or exceeded. The taxpayer may be required to repay any tax benefits received under subparagraph (A) of this paragraph on or after that date plus penalty and interest as may be allowed by law;

(34.2)(A) The sale or use of machinery or equipment, or both, which is used ~~directly~~ in the remanufacture of aircraft engines or aircraft engine parts or components in a remanufacturing facility located in this state. For purposes of this paragraph, 'remanufacture of aircraft engines or aircraft engine parts or components' means the substantial overhauling or rebuilding of aircraft engines or aircraft engine parts or components.

(B) Any person making a sale of machinery or equipment, or both, for the remanufacture of aircraft engines or aircraft engine parts or components shall collect the tax imposed on the sale by this article unless the purchaser furnishes a certificate

issued by the commissioner certifying that the purchaser is entitled to purchase the machinery or equipment without paying the tax;

(34.3)(A) The sale or use of repair or replacement parts, machinery clothing or replacement machinery clothing, molds or replacement molds, dies or replacement dies, waxes, and tooling or replacement tooling for machinery ~~used directly in~~ which is necessary and integral to the manufacture of tangible personal property in a manufacturing plant presently existing in this state.

~~(B) The exemption provided for in this paragraph shall apply to that portion of the sales price of each such part, item of machinery clothing, mold, die, or tool which does not exceed \$150,000.00.~~

~~(C) The exemption provided for in this paragraph shall be applicable to all calendar years beginning on or after January 1, 2001, as follows:~~

~~(i) At the rate of 20 percent of the total sale or use as provided in subparagraph (A) of this paragraph for the calendar year beginning January 1, 2001;~~

~~(ii) At the rate of 40 percent of the total sale or use as provided in subparagraph (A) of this paragraph for the calendar year beginning January 1, 2002;~~

~~(iii) At the rate of 60 percent of the total sale or use as provided in subparagraph (A) of this paragraph for the calendar year beginning January 1, 2003;~~

~~(iv) At the rate of 80 percent of the total sale or use as provided in subparagraph (A) of this paragraph for the calendar year beginning January 1, 2004; and~~

~~(v) At the rate of 100 percent of the total sale or use as provided in subparagraph (A) of this paragraph for the calendar year beginning January 1, 2005, and for each calendar year thereafter.~~

~~(D)~~(B) The commissioner shall promulgate rules and regulations to implement and administer this paragraph;"

"(36)(A) The sale of machinery and equipment and any repair, replacement, or component parts for such machinery and equipment which is ~~incorporated into any facility and~~ used for the primary purpose of reducing or eliminating air or water pollution;

(B) Any person making a sale of machinery and equipment or repair, replacement, or component parts for such machinery and equipment for the purposes specified in this paragraph shall collect the tax imposed on the sale by this article unless the purchaser furnishes him with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the machinery and equipment or repair, replacement, or component parts for such machinery and equipment without paying the tax;"

**SECTION 2.**

(a) This Act shall become effective on January 1, 2009.

(b) Tax, penalty, and interest liabilities and refund eligibility under paragraph (34.3) of Code Section 48-8-3 of the Official Code of Georgia Annotated, as amended by Section 1 of this Act, for any period prior to January 1, 2009, shall not be affected by the passage of this Act and shall continue to be governed by the provisions of said paragraph as it existed immediately prior to January 1, 2009.

**SECTION 3.**

All laws and parts of laws in conflict with this Act are repealed.